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Docket Number: 1085-039-PWH
Application No. 10/031,327
Amendment C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Beighton, A.

Building Structures

Application No: 10/031,327

Filed: June 27, 2002

Examiner: Chapman, Jeanette E.

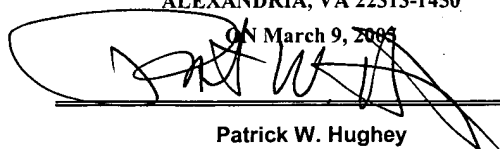
Art Unit: 3635

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ON March 9, 2005



Patrick W. Hughey

**PETITION TO THE DIRECTOR UNDER 37 CFR § 181
FROM A FINAL DECISION REQUIRING RESTRICTION**

Sir:

This is to request withdrawal of a restriction requirement originally made in this application on May 5, 2003. The originally filed claims 40 – 62 were separated by the Examiner into two groups: Group I, claims 40 – 62, and 66 (apparatus claims) and Group II, claims 63 – 65 (method claims).

In a paper mailed June 5, 2003 applicant elected, with traverse, the invention identified in the requirement as Group I, comprising claims 40 – 62 and 66.

In traversing the restriction requirement the applicant noted that claim 63 of Group II defined a method whereby a plurality of enclosed room modules are provided for cantilevered attachment to a support module.

In comparing the foregoing inventions as claimed, applicant pointed out that there exists between those claims a technical relationship involving one or more of the same or corresponding special technical features, such as the cantilevered attachment of the room modules to the support module. The recitation in dependent claim 64 of a particularly preferred way of attaching a room module to a support module does not negate the special technical features present between the inventions identified as Groups I and II.

Applicant concluded the traversal with a request that the restriction requirement be withdrawn.

Subsequent to the filing of the June 5, 2003 paper incorporating the just summarized traversal, all of the elected claims were rejected in a September 2, 2003 office action. Claims 63 - 65 were apparently withdrawn, but the office action made no mention of those Group II claims. Moreover, the Examiner had not addressed the merits of the traversal of the restriction requirement.

Thus, in a December 1, 2003 Amendment A, applicant respectfully requested consideration of the previously offered traversal so that the requirement, if made final, could be timely petitioned. Amendment A also added new apparatus claims 67 - 70.

The March 24, 2004 final office action made no mention of claims 63 - 65, nor was applicant's request for consideration of the traversal of the restriction requirement addressed. The requirement was not, therefore, made final. New claims 67 - 70 were not mentioned in the office action and apparently not considered.

Applicant then filed a notice of appeal and, before the due date for an appeal brief, filed on September 27, 2004 a request for continued examination (RCE) along with a preliminary amendment, and an information disclosure statement. The preliminary amendment included claims 71 - 96. Claims 71 - 92 are apparatus claims that replace and generally conform to the previously presented claims 40 - 62 and 66 of Group I. Method claims 93 - 95 were included in the preliminary amendment to replace the original (Group II) method claims 63 - 65.

In the subsequent, January 10, 2005, office action, the Examiner commented on the restriction requirement that was first made on May 5, 2003 and traversed June 5, 2003, stating:

"Applicant elected Group I in paper number 10, filed 6/5/03. Claims directed to the article or apparatus was given an examination on the merits. Claims 63 - 65 directed to the method had been therefore withdrawn. Applicant finally cancelled claims 1 - 70. Claims 71 - 96 are now pending. By original presentation, article or apparatus claims were elected and therefore method claims 93 - 95 have been withdrawn."

Applicant considers the foregoing to have the effect of making final the restriction requirement. Applicant notes, however, that the foregoing merely reviews the earlier election, and applicant's traversal of the restriction has not been considered. Moreover, Applicant believes that once the claim term "cantilevered" is given due consideration, the technical feature present between the claims groups will become evident, and therefore, the restriction requirement may be withdrawn.

Conclusion

Applicant, hereby requests the Director to consider the foregoing and order the withdrawal of the restriction requirement and consideration of all currently pending claims in this application.

Respectfully submitted,
ipsolon llp

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